

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

SOUTHERN ENVIRONMENTAL LAW
CENTER,

Plaintiff,

v.

COUNCIL ON ENVIRONMENTAL
QUALITY,

Defendant.

Civil Action No. 3:18CV00113

**MEMORANDUM OPINION &
ORDER**

By: Hon. Glen E. Conrad
Senior United States District Judge

On October 23, 2020, the court held a telephonic hearing on the parties' cross-motions for summary judgment. The court announced at the hearing that it will approach documents still at issue in the case by means of a categorical approach that adopts the five categories spelled out in the Declaration of Howard C. Sun. (See ECF No. 46-1 at 6.) The court also stated that it will (1) order Defendant Council on Environmental Equality ("CEQ") to produce certain documents to Plaintiff Southern Environmental Law Center ("SELC"), (2) order CEQ to produce certain documents to the court for in camera review, and (3) rule certain categories of documents properly withheld or redacted. Finally, upon a showing of good cause by either side, the court will consider reviewing additional documents in camera.

Except as otherwise provided below, wherein the court either establishes a protocol for in camera review or orders CEQ to produce certain documents, the court concludes that CEQ properly withheld or redacted documents that fall within the following categories from the Declaration of Howard C. Sun: (1) drafts of rulemaking notices and other related documents; (3) email communications, internal working group minutes, and other documents regarding the rule drafting process; (4) drafts of Congressional testimony, draft responses to questions for the record

for Congressional hearings, and other draft documents related to preparation for the United States Senate confirmation process; and (5) drafts of talking points and other materials. (See ECF No. 46-1 at 6.)

CEQ shall produce to SELC the spreadsheets tracking and analyzing comments (specifically, those documents referenced at Vaughn index lines 43, 94, 107, 110, 187, 342, 564, 566, 1081, 1083, 1085, 1092, 1277, 1280, 1340, 1392, 1398, 1416, 1459, 1464–67, 1470, 1493, 1494, 1498, 1506, 1507).

CEQ shall produce to the court for in camera review the following documents: draft ANPRM fact sheets (specifically, those documents referenced at Vaughn index lines 160, 162, 164, 166, 272, 274, 276, 292, 294, 296, 457, 459, 461, 631, 633, 1028, 1434, 1442–43); meeting agendas (specifically, those documents referenced at Vaughn index lines 833, 834, 1020, 1149, 1153, 1423, 1503, 1510, and 1569); emails and meeting invitations regarding CEQ’s process for logging, tracking, managing, and analyzing comments (specifically, those documents referenced at Vaughn index lines 99, 1095, 1102, and 1110); emails describing the tasks assigned to members of CEQ’s internal NEPA implementing regulations working group (specifically, those documents referenced at Vaughn index lines 1224 and 1325); and Exhibits G, H, M, and N to SELC’s Memorandum in Support of its Motion for Summary Judgment, ECF No. 43. CEQ shall produce both redacted and unredacted versions of the above documents to the court for in camera review.¹

Again, the court emphasizes that upon a showing of good cause by either side, the court will consider reviewing additional documents in camera. SELC may seek in camera review of additional documents it believes that the court should have ordered produced, and CEQ may

¹ If there are any inconsistencies between the list of documents designated for in camera review and those designated for immediate production from CEQ to SELC, CEQ may so advise the court and the court will attempt to address the inconsistencies.

similarly seek in camera review of documents it believes the court should not have ordered produced.

It is so **ORDERED**.

The Clerk is directed to send copies of this order to all counsel of record.

DATED: This 30th day of October, 2020.

A handwritten signature in black ink, appearing to read "J. A. Connelley", is written above a horizontal line.

Senior United States District Judge